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Copyright Royalty Board

37 CFR Part 385

[Docket No. 2011-3 CRB Phonorecords II]

Adjustment of Determination of Compulsory License Rates for Mechanical and Digital Phonorecords

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule; technical amendment.

SUMMARY: The Copyright Royalty Judges are making a technical amendment to the regulations regarding the rates and terms for the section 115 statutory license for the use of musical works in physical phonorecord deliveries, permanent digital downloads, ringtones, interactive streaming, limited downloads, limited offerings, mixed service bundles, music bundles, paid locker services, and purchased content locker services. The technical amendment corrects a clerical error regarding an accounting provision in the final rule.

DATES: *Effective:* January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor. Telephone: (202) 707-7658 or email at crb@loc.gov.

SUPPLEMENTARY INFORMATION: On November 13, 2013, the Copyright Royalty Judges (Judges) published in the **Federal Register** final regulations setting the rates and terms for the section 115 statutory license for the use of musical works in physical phonorecord deliveries, permanent digital downloads, ringtones, interactive streaming, limited downloads, limited offerings, mixed service bundles, music bundles, paid locker services, and purchased content locker services. 78 FR 67938. In the preamble to the final rule, the Judges stated that

they could not adopt an accounting provision proposed in § 385.12(e)¹ because of a finding by the Register of Copyrights (Register) that adoption by the Judges of such a provision “represent[ed] an encroachment on the Register’s [exclusive] authority regarding statements of account” kept under the section 115 statutory license. *See Id.* at 67940, *citing* 78 FR 28772 (May 16, 2013). Due to an inadvertent oversight, however, no instruction reflecting the removal of § 385.12(e) appeared in the regulatory text.² The Judges now correct this error.

Section 803(c)(4) of the Copyright Act authorizes the Judges to issue “an amendment to a written determination to correct any technical or clerical errors in the determination” and directs that such amendment “be set forth in a written addendum to the determination that shall be distributed to the participants and shall be published in the **Federal Register**.” 17 U.S.C. 803(c)(4).³ The Judges make this correction by today’s notice pursuant to their continuing jurisdiction under section 803(c)(4) of the Copyright Act.

List of Subjects in 37 CFR Part 385

Copyright, Phonorecords, Recordings.

Final Regulations

¹ The Judges proposed two accounting provisions—§ 385.12(e) and § 385.22(d)—each of which would have required the licensee’s statement of account to “set forth each step of its calculations with sufficient information to allow the copyright owner to assess the accuracy and manner in which the licensee determined the payable royalty pool and per-play allocations (including information sufficient to demonstrate whether and how a minimum royalty or subscriber-based royalty floor pursuant to § 385.13 does or does not apply) and, for each offering reported, also indicate the type of licensed activity involved and the number of plays of each musical work (including an indication of any overtime adjustment applied) that is the basis of the per-work royalty allocation being paid.” 77 FR 29259, 29267 (May 17, 2012). The language of proposed § 385.22(d) mirrored that in § 385.12(e), except for non-substantive conforming language needed for its inclusion in proposed Subpart C.

² Today’s amendment concerns only proposed § 385.12(e) because this section was adopted initially by the Judges in 2009. *See* 74 FR 4510 (Jan. 26, 2009). Proposed § 385.22(d) was part of a newly proposed Subpart C, *see* 77 FR 29259 (May 17, 2012), and was not adopted in the final rule published on November 13, 2013.

³ The Judges provided a copy of this technical amendment to the participants of this proceeding prior to its submission to the **Federal Register** for publication.

For the reasons set forth in the preamble, the Copyright Royalty Judges amend Part 385 of Chapter III of title 37 of the Code of Federal Regulations as follows:

**PART 385—RATES AND TERMS FOR USE OF MUSICAL WORKS UNDER
COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING OF PHYSICAL AND
DIGITAL PHONORECORDS**

1. The authority citation for part 385 continues to read as follows:

Authority: 17 U.S.C. 115, 801(b)(1), 804(b)(4).

§ 385.12 [Amended]

2. Section 385.12 is amended by removing paragraph (e).

Dated: November 18, 2013

Suzanne M. Barnett,
Chief Copyright Royalty Judge.

Approved by:

James H. Billington,
Librarian of Congress.

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